



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 13, 2000

H.R. 2372 **Private Property Rights Implementation Act of 2000**

As ordered reported by the House Committee on the Judiciary on March 9, 2000

SUMMARY

Enacting H.R. 2372 would give greater access to federal courts to plaintiffs making claims based on property owners' rights secured by the Constitution. As a result, the bill is likely to impose additional costs on the U.S. court system. While some of the affected cases could be time-consuming and costly, CBO cannot predict the number or cost of such cases. Enactment of H.R. 2372 would not affect direct spending or receipts of the federal government, and therefore, pay-as-you-go procedures would not apply. H.R. 2372 may be excluded from application of the Unfunded Mandates Reform Act (UMRA). In any event, the bill would not impose an enforceable duty on state, local, or tribal governments, or the private sector.

The Fifth Amendment prohibits the taking of private property for public use without just compensation. This restriction on government action is extended to the states through the due process clause of the 14th Amendment. H.R. 2372 would affect takings claims directed at the regulatory decisions of federal, state, and local governments. First, this bill would prohibit a federal district court from exercising its current right to abstain from hearing certain takings claims. H.R. 2372 also would define "final decision" for these property rights claims, thereby relaxing the standards by which such claims are found ripe for adjudication in federal district courts, or the U.S. Court of Federal Claims.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Most takings cases affected by this bill would originate from a dispute over a state or local land use regulation. When local regulation is at issue, a number of appeals to local governing boards may occur. When those venues are exhausted and when the claim asserts a taking, federal courts often defer to state courts by refusing jurisdiction in such matters.

The federal courts often argue that such cases are not ripe for federal adjudication because plaintiffs have not exhausted their opportunities to obtain compensation through the state courts. CBO expects that enacting the jurisdictional changes under H.R. 2372 would give plaintiffs greater access to federal courts, thus imposing additional costs on the U.S. court system to the extent that additional takings claims are filed and heard in federal courts.

Based on information from various legal experts, CBO estimates that only a small percentage of all civil cases filed in state courts involve takings claims. Of these, CBO believes that only a small proportion would be tried in federal court as the result of H.R. 2372, in part because state and local regulators may have an incentive to settle with plaintiffs in order to avoid a trial in federal court. On the other hand, most cases that would reach trial in a federal court as a result of this bill are likely to involve relatively large claims and could be time-consuming and costly. CBO has no basis for estimating the number of cases that would be affected or the amount of court costs that would result. Any such costs would come from appropriated funds.

CBO does not expect the bill's requirement that federal district courts and the U.S. Court of Federal Claims hear claims against the federal government when a "final decision" exists would have any significant effect on the budget. This provision would not affect the outcome of complaints or cause any material change in the caseload of the federal court system. It could result in earlier decisions in some proceedings, which may change the timing of federal court and agency costs, but we expect that such effects would be minimal.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from application of that act legislative provisions that enforce constitutional rights of individuals. Because the changes to federal jurisdiction over property rights cases could involve the enforcement of certain individual constitutional rights, H.R. 2372 may be excluded. In any event, because the changes only affect federal court procedures, the bill would not impose any enforceable duty on state, local, or tribal governments, or on the private sector.

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